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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,753	03/30/2001	Tuqiang Ni	2328-053	5171

7590

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EXAMINER
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ALEJANDRO MULERO, LUZ L

ART UNIT	PAPER NUMBER
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1763

DATE MAILED: 10/07/2002

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/821,753

Applicant(s)

NI ET AL.

Examiner

Luz L. Alejandro

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-- The MAILING DATE of this c mmunication appears on the cover sheet with the correspondenc address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 17-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Pap r No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13 and 17-22, drawn to a method of processing and a computer program for processing a workpiece, classified in class 438, subclass 713.
- II. Claims 14-16, drawn to a plasma apparatus, classified in class 118, subclass 712.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by hand by the operator gradually changing the amount of AC power applied to the plasma.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Allan Lowe on 7-31-02 a provisional election was made with traverse to prosecute the invention of group I, claims 1-13 and 17-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-13 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al., U.S. Patent 5,807,789 in view of Howald et al., WO 00/58992.

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Chen et al. discloses forming a trench through plasma etching where the RF power is gradually changed and the flow rate and the species are not changed in order to form a trench with a tapered profile and rounded corners at an intersection of a wall and a base of a trench in response to the gradual power change (see col. 2-line 64 to col. 4-line 30).

Chen et al. fails to expressly disclose the following: processing in a plasma processing chamber being subject to operating at different pressures while the workpiece is being processed, the gas species being subject to flowing into the chamber at different flow rates, the gradual change being pre-programmed while no change occurs in the pressure, wherein the AC power is supplied by an electrode coupling an AC electric field to plasma in the chamber, the electrode being responsive to an AC power source that supplies RF bias to the electrode that is on a holder for the workpiece, the AC power supplied by a coil coupling an RF plasma electromagnetic field to the chamber, and processing parameters such as the steps of the power change and the amount of time the power remains constant.

Howald et al. discloses a method of processing by etching (see page 1-lines 15-19) a workpiece in a vacuum plasma processor chamber including computers 20 and 34 and wherein a gas species is converted into an AC plasma (see page 6-lines 17-20), the vacuum chamber being subject to operating at different pressures while the workpiece is being processed, the gas species being subject to flowing into the chamber at different flow rates while the workpiece is being processed (see page 2, lines 15-22). Note also that the AC power is supplied by an electrode 56 being on a

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holder for the workpiece and the electrode is responsive to an AC power source and the AC power is supplied by a coil 48 coupling an RF plasma excitation field to the chamber. In view of this disclosure, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the process disclosed by the primary reference of Chen et al. in the apparatus of the secondary reference of Howald et al. because such an apparatus as disclosed by Chen et al. allows for a high level of control over the process performed.

Furthermore, with respect to the gradual power change being pre-programmed while no change occurs in the pressure, it would have been obvious to one of ordinary skill in the art at the time the invention was made to pre-program the power change into the microprocessors 20,34 of Howald because in such a way operator error would be eliminated. Additionally, it would have been obvious to determine through routine experimentation the optimum combination of power, pressure, and flow rate necessary to achieve the desired profile of the trench. For example, to leave the pressure and flow rates constant throughout the process would require greater changes in the power than if the other variables were also changed. Furthermore, the processing parameters such as the steps of the power change and the amount of time the power remains constant would not render the invention patentable because, generally, differences in process parameters will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such processing parameters are critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to

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discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).


### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Molvik et al., U.S. Patent 5,824,602 discloses a method of etching a trench in a silicon substrate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luz L. Alejandro whose telephone number is 305-4545. The examiner can normally be reached on Monday-Thursday from 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Mills, can be reached on 308-1633. The fax phone numbers for the organization where this application or proceeding is assigned are 872-9310 for regular communications and 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0661.

  
Luz L. Alejandro  
Patent Examiner  
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September 29, 2002